fects, is derived from the ecclesiastical courts and not from the common law. See *Devanbagh* v. *Devanbagh* (N. Y. 1836) 5 Paige Ch. 554, 555. In criminal cases, because of constitutional provisions against self-incrimination, the accused cannot be forced to submit to physical examination. *State* v. *Newcomb* (1909) 220 Mo. 54, 119 S. W. 405. But in actions for personal injuries, in spite of a lack of authority at early common law, compulsory examination of the plaintiff is now usually discretionary with the trial court. *Alabama Gr. So. R. R.* v. *Hill* (1890) 90 Ala. 71, 8 So. 90; *Richmond & Danville Ry.* v. *Childress* (1889) 82 Ga. 719, 9 S. E. 602; *Lyon* v. *Manhattan Ry.* (1894) 142 N. Y. 298, 37 N. E. 113 (under a statute); *contra, Peoria D. & E. Ry.* v. *Rice* (1893) 144 Ill. 227, 33 N. E. 951 (allowing no examination). The court in the instant case had to balance two conflicting policies. On the one hand it is the policy of the law to afford all possible means of bringing out the truth. On the other hand there is the desire to discourage the publication of defamatory statements, even though true. Thus the defendant is required to prove the truth of the exact statement made. *Buckner* v. *Spaulding* (1890) 127 Ind. 229, 26 N. E. 792. In some states slander, though true, is criminal. *E. g.,* Wis. Stat. (1919) § 4569(2). This policy, combined with the traditional feeling against forcing one to submit to the indignity of a physical examination, properly prevails, even though the effect is to make it almost impossible for the defendant to establish the truth of his statements.

INSURANCE—VIOLATION OF PENAL STATUTE BY INSURED.—The plaintiff sued the defendant insurance company on an indemnity policy to recover what he had been compelled to pay to one T for injuries inflicted by the plaintiff's car. The accident occurred while the car was being driven at the plaintiff's direction by an infant under eighteen, in violation of a statute. The defendant contended that to allow indemnity was inconsistent with public policy. *Held,* for the plaintiff. *Messersmith* v. *American Fidelity Co.* (1921) 232 N. Y. 161, 133 N. E. 432.

Within wide limits legislative determination of public policy is final. See *Demarest* v. *Flack* (1891) 128 N. Y. 205, 214, 28 N. E. 645. A New York statute allows owners to insure against liability incurred through their use and maintenance of automobiles. N. Y. Cons. Laws (1909) c. 33, § 70. Penal statutes are so extensive that civil liability for automobile accidents is rarely incurred without their violation. *Cf.* N. Y. Cons. Laws (1909) c. 30, § 290 (Highway Law); N. Y. Cons. Laws (1909) c. 88, § 1052 (Penal Law). To restrict recovery to cases where the accident occurred without infringing any penal statute would make indemnity insurance of very little practical value. It is fair to conclude, therefore, that the legislature by allowing this type of insurance indicated that it did not consider its collection in such cases against public policy. Where the injury caused by the insured was willful there can be no recovery on the policy. But the injury in the instant case was not willful in that sense. Although the violation of the statute was willful, that violation was only indirectly responsible for T's injuries, which were not intended by the plaintiff.

INTOXICATING LIQUORS—VOLSTEAD ACT—RIGHT TO TRANSPORT.—Prior to the Volstead Act the plaintiff bought liquor which was stored in a government bonded warehouse. Subsequent to the passing of the Act the defendants, internal revenue collectors, refused to permit the removal of the liquor, although the plaintiff tendered payment of the taxes due. *Held,* Mr. Justice McReynolds dissenting, such detention was proper, and not in violation of the Fifth Amendment. *Corneli* v. *Moore* (U. S. 1922) 42 Sup. Ct. 176.

While this holding seems the obvious interpretation of the Volstead Act it is difficult to reconcile it with *Street* v. *Lincoln Safe Deposit Co.* (1920) 254 U. S.

88, 41 Sup. Ct. 31. That case held that a public warehouse, in which the plaintiff had leased a room, was an extension of his dwelling, and not within the prohibition of the Act. Mr. Justice McReynolds dissented in the instant case because it was indistinguishable from the *Street* case. His position is hard to assail. To hold a public warehouse contributory to the dwelling of every person who has leased a room in it is a fiction out of harmony with the provision that the Volstead Act "shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented." See (1919) 41 Stat. 305, 308. If, however, the *Street* case is good law, there is little reason for reaching a different conclusion when the liquor is in a government bonded warehouse. In the latter case the government has a claim on the liquor, whereas in the *Street* case the plaintiff had exclusive ownership. But the government's only claim on bonded liquor is for taxes due, and they were tendered here. It was contended in the *Street* case that it was unfair to discriminate against those not having storage facilities in their dwellings. While this argument has force, the Volstead Act does not provide for such a situation. See (1919) 41 Stat. 315, 317. It appears that the *Street* case set a precedent which the court in the instant case sought to limit to its precise facts.

LIMITATION OF ACTIONS—REVIVAL OF BARRED STATUTORY RIGHTS.—The plaintiff was injured in October, 1917, while in the defendant railway's employ. In December, 1917, the federal government assumed control of the railroads, relinquishing it in February, 1920, by the Transportation Act, which provided, *inter alia,* that the period of federal control should not be computed as a part of the periods of limitation in actions against carriers arising prior to federal control. The plaintiff brought an action for damages in May, 1921. Upon demurrer to the complaint, *held,* for the defendant. The right of action was barred by the two year limitation in the Federal Employers' Liability Act. *Kannellos* v. *Great Northern Ry.* (Minn. 1922) 186 N. W. 389.

The ambiguity of the word "limitation" in the Transportation Act raises the distinction between common law and statutory rights and remedies. The artificiality of this distinction is indicated in (1921) 21 COLUMBIA LAW REV. 366. Statutes in derogation of the common law are strictly construed; thus where a statute creates a new right for a limited period it is held that the right itself is resricted and not merely the remedy. *The Harrisburg* (1886) 119 U. S. 199, 7 Sup. Ct. 140. Such a statute is treated as one of creation rather than of limitation, and bringing suit within the time limit as a condition precedent to the arising of liability. *The Harrisburg, supra.* Compliance with the statute is, therefore, required to be averred in the pleading. *Lapsley* v. *Public Service Corporation* (1908) 75 N. J. L. 266, 68 Atl. 1113. And the defendant need not set up the limitation affirmatively as is required where only the remedy is affected. *Atlantic Coast Line R. R.* v. *Burnette* (1915) 239 U. S. 199, 36 Sup. Ct. 75. The reason for the provision in the Transportation Act that the period of federal control should not be computed in determining the time of the limitation was that temporary stay laws or moratoria prevented creditors from maintaining actions during the war period. But this reason is not applicable in the instant case since the injured party, by express reservation in the President's Proclamation of 1917, was allowed his action as before. *West* v. *New York, N. H. & H. R. R.* (1919) 233 Mass. 162, 123 N. E. 621.

NEGOTIABLE INSTRUMENTS—WANT OF CONSIDERATION—BURDEN OF PROOF.—In an action by the payee against the maker of a promissory note, conflicting evidence as to consideration was introduced. There was a verdict for the plaintiff. On